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OFFICE OF PETITIONS

In re Application of :
Torp, et al. :
Application No. 10/705,419 : DECISION ON PETITION
Filed: November 10, 2003 :
Attorney Docket No. 15-DS-000523 :
DIV2-1 (1248)

This is a decision on the petition under 37 CFR 1.182, filed February 19, 2004, requesting that the above-identified application be accorded a filing date of November 10, 2003.

The instant application was deposited on November 10, 2003, as a divisional application of prior application no. 10/054,033. However, the instant application omitted a copy of the drawings. Accordingly, on January 5, 2004, the Office of Initial Patent Examination properly mailed a "Notice of Incomplete Nonprovisional Application", requiring drawings and stating that the filing date would be the date of receipt of the drawings.

In response, petitioner filed the present petition on February 19, 2004, together with a copy of the omitted drawings. Petitioner does not dispute the fact that no drawings were filed in the instant application. Rather, petitioner points out that he incorporated prior application 10/054,033 by reference in the application transmittal form.

With respect to the practice of incorporation by reference, the Manual of Patent Examining Procedure states:

Material needed to accord an application a filing date may not be incorporated by reference. Therefore, if a continuation or divisional application as originally filed incorporates by reference material omitted from the application papers, which is needed to accord the application a filing date, the application will not be

entitled to a filing date. A petition under 37 CFR 1.182 and the required petition fee, including an amendment submitting the necessary omitted material, requesting that the necessary omitted material contained in the prior application and submitted in the amendment, be included in the continuation or divisional application based upon the incorporation by reference statement, is required in order to accord the application a filing date as of the date of deposit of the continuation or divisional application. An amendment submitting the omitted material and relying upon the incorporation by reference will not be entered in the continuation or divisional application unless a decision granting the petition states that the application is accorded a filing date and that the amendment will be entered.¹

Incorporation by reference is intended as a safeguard to protect an applicant who in a continuation or divisional application has omitted a "portion" of the application on filing. Here, petitioner omitted drawings in their entirety. As at least one drawing was necessary to accord the instant application a filing date, no filing date was accorded at the time of filing. However, petitioner properly incorporated prior application no. 10/054,033 by reference. In addition, petitioner submitted the omitted drawings and paid the \$130 petition fee. While petitioner has not specifically submitted an amendment seeking entry of the drawings, the petition will be construed as such. Accordingly, the above identified application is entitled to a filing date of November 10, 2003.

In view thereof, the petition is GRANTED.

The application is being forwarded to the Office of Initial Patent Examination (OIPE) for further processing with a filing date of November 10, 2003, using the application papers received in the Office on that date and the 11 sheets of drawings supplied with the petition filed February 19, 2004. Applicants will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OIPE.

Telephone inquiries specific to this decision should be directed to Petitions Attorney Cliff Congo at (703) 305-0272.

E. Steven Miller for
Charles Pearson
Director
Office of Petitions

¹ MPEP 201.06(c) (emphasis added).

² See id.